In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1235

FRANCIS DEANGELIS AND ROBERT MILLER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The court of appeals affirmed without opinion the judgments rendered below (Pet. App. A).

JURISDICTION

The judgment of the court of appeals was entered on December 18, 1970. The petition was filed on January 14, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was probable cause to believe that petitioners were in possession of stolen interstate freight so as to justify their arrest and the search incident thereto.

416-815—71

STATEMENT

After a jury trial in the United States District Court for the Eastern District of New York, petitioners were convicted of one count of knowingly and unlawfully receiving stolen interstate freight in violation of 18 U.S.C. 659.[1] Petitioner DeAngelis was sentenced to two years' imprisonment, and petitioner Miller received a five year sentence, one month's imprisonment with the balance to be served on probation.

Prior to trial, petitioners moved to suppress evidence of cartons of freight seized incident to their arrest. The district judge twice held that petitioners lacked standing under Rule 41(e) of the Federal Rules of Criminal Procedure to complain of the alleged unlawful search and seizure (H, I 52; H, II 118). However, a full suppression hearing was conducted and at its conclusion the court ruled that the seizure was not unlawful (H, II 119).

The investigation which culminated in petitioners' arrests began on the morning of November 6, 1967, when special agents of the FBI's hijacking squad observed a Railway Express Agency (REA) truck leaving premises which appeared to them as a "junkyard or parking lot, or some kind of enclosed yard" (H, I 55). Because the yard had no apparent connection with REA, either as a loading or delivery

[1] We are lodging with the Clerk the transcript of trial (Tr., Volumes I, II, and III) and of the hearings on petitioners' motion to suppress (H, Volumes I and II).

point, the agents became suspicious and, accordingly, instituted a stolen vehicle check (H, II 7; H, I 56). Shortly thereafter, the agents received a radio report from FBI headquarters informing them that the truck had in fact been stolen (H, I 57). They were then directed to establish surveillance of the lot and other members of the hijacking squad were dispatched to offer assistance (H, I 146).

Two of the agents established an observation post in a factory diagonally across from the yard in question (H, I 114). On two separate occasions a man later identified as Paul DeVilla[2] was observed surveying the area in front of the lot, leading the agents to believe a "security check" was being conducted (H, I 115, 116). A short while later, these same agents observed a U-Haul truck being backed into the lot, with petitioner DeAngelis directing the maneuver (H, I 116–117). A continuous surveillance of the lot had established that no other vehicle and no other persons had attempted to enter the lot prior to this time. With the arrival of the U-Haul truck, these observations were transmitted to FBI headquarters and instructions were received to continue the surveillance and to "move in" if any activity indicated the freight was about to be moved (H, I 61, 118).

At this point, two other agents established surveillance from the porch of a house situated so that they could observe activities within the lot itself (H,

[2] DeVilla was indicted with petitioners but his case was severed prior to the commencement of this trial (Tr. I 19).

II 11, 60). Both saw cartons being loaded into the U-Haul by petitioners (H, II 11, 61) and each noticed REA symbols affixed to some of these packages (H, II 11, 62). They then communicated to Agent McGoey, who was controlling the activities and who later made the decision to arrest, that the "stuff" or the "swag" (a law enforcement term for stolen goods (H, II 12)) was being loaded onto the truck (H, II 12, 62). While not in a position to observe activity within the lot as accurately as the agents on the porch, Agent McGoey was able to glance briefly through a fence and see that the cartons were in fact being loaded (H, I 62). McGoey then made the decision to "move in". He and other agents entered the lot (H, I 65), arrested petitioners and seized the cartons.

ARGUMENT

Petitioner contends that because Agent McGoey (who made the decision to arrest) had no personal knowledge that the cartons seized had REA markings, there was insufficient probable cause for the arrest. Given the circumstances preceding the arrest, the existence of probable cause was in no way dependent upon anyone's having actually seen the REA markings. Agent McGoey, an experienced member of the FBI's hijacking squad (Tr. I 23), had knowledge of a series of events which strongly suggested that a pick-up of stolen freight was about to take place at the lot under surveillance. Information that cartons were being loaded onto the U-Haul, coupled with his personal observation in this respect, confirmed the suspicion.

At this point prompt action was necessary to prevent successful completion of the crime. Accordingly, Agent McGoey decided to "move in". To argue that probable cause was lacking because McGoey did not personally view REA markings on the cartons is to require a standard wholly inconsistent with this Court's admonition that probable cause is to be derived from "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act", *Brinegar* v. *United States*, 338 U.S. 160, 175.

Even if knowledge of the REA markings on the cartons be deemed an essential component of probable cause here, there is still no difficulty with this case since it is clear that two of the agents had in fact seen the markings. Although they did not communicate to Agent McGoey the full details of their observations, having informed him only that the stolen goods were being loaded, Agent McGoey quite reasonably assumed they were referring to the freight stolen from the REA truck. It is not essential that an arresting officer have personal knowledge of every or, indeed, any component of probable cause. It is sufficient that within the investigating unit there is sufficient collective awareness of the circumstances constituting probable cause. *United States* v. *Bianco*, 189 F. 2d 716 (C.A. 3); *Smith* v. *United States*, 358 F. 2d 833 (C.A. D.C.); *United States* v. *Pitt*, 382 F. 2d 322 (C.A. 4); *Moreno-Vallejo* v. *United States*, 414 F. 2d 901 (C.A. 5). The collective knowledge of the agents working together in this case was properly considered in determining probable cause.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1971.

U. S. GOVERNMENT PRINTING OFFICE : 1971